

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * *

United States of America,

Plaintiff,

vs.

REPORT AND
RECOMMENDATION

Paul Cory Fenstermaker,

Defendant.

Crim. 07-78 (DSD/RLE)

* * * * *

I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(B), upon the following Motions of the Defendant Paul Cory Fenstermaker:

1. The Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure.
2. The Defendant's Motion to Suppress Statements, Admissions, and Answers.

A Hearing on the Motions was conducted on April 9, 2007, at which time, the Defendant appeared personally, and by George E. Rapaich, Esq., and the Government appeared by Thomas M. Hollenhorst, Assistant United States Attorney. For reasons which follow, we recommend that each of the Defendant's Motions be denied.

II. Discussion

As to each of the Defendant's Motions to Suppress, there is no dispute between the parties. While post-arrest statements were taken from the Defendant, the Government advises that no such statements will be offered in its case-in-chief at Trial. In addition, tape recordings were made of certain of the Defendant's telephone conversations from the Jail in which he was detained. Those tape recordings may, or may not, be offered at the time of Trial, but both parties concede that the use of those tape recordings does not implicate constitutional concerns. Accordingly, we recommend that the Defendant's Motion to Suppress Statements, Admissions, and Answers, be denied as moot.

Similarly, while certain evidence was seized from the Defendant, the Government advises that it does not intend to offer, at Trial, any evidence that was obtained by search or seizure, and urges, therefore, that the Defendant's Motion to Suppress be denied as moot. The Defendant does not argue to the contrary, and

therefore, we recommend that the Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure be denied as moot.

NOW, THEREFORE, It is --

RECOMMENDED:

1. That the Defendant's Motion to Suppress Statements, Admissions, and Answers [Docket No. 16] be denied as moot.

2. That the Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure [Docket No. 19] be denied as moot.

Dated: April 9, 2007

s/Raymond L. Erickson

Raymond L. Erickson

CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 45(a), Federal Rules of Criminal Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than April 26, 2007**, a writing which specifically identifies those portions

of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than April 26, 2007**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.